



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY VALLEY REGIONAL OFFICE

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### STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO AGRI-SLUDGE, INC. FOR L. WAYNE PHILLIPS FARM VPA Permit No. VPA01584

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Agri-Sludge, Inc., regarding the L. Wayne Phillips Farm, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Agri-Sludge" means Agri-Sludge, Inc., a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Agri-Sludge is a "person" within the meaning of Va. Code § 62.1-44.3.
2. "Biosolids" means a sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part 503 and [9VAC25-32-356](#), such that it meets the standards established for use of biosolids for land application in accordance with the Virginia Pollution Abatement regulation. Liquid biosolids contains less than 15% dry residue by weight. Dewatered biosolids contains 15% or more dry residue by weight.

3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Facility" or "Site" means the L. Wayne Phillips Farm located at 1549 Mauzy Athlone Road in Broadway, Virginia, where Agri-Sludge, Inc. manages biosolids which are the subject of the Permit.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "O&M" means operations and maintenance.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
10. "Permit" means VPA Permit No. VPA01584, which was issued under the State Water Control Law and the Regulation on November 1, 2011 and which expires on October 31, 2021. The Permit was modified on July 15, 2015.
11. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to, pollution. It does not mean (i) sewage from vessels; or (ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by Department of Mines Minerals and Energy unless the Board determines that such injection or disposal will result in the degradation of ground or surface water resources.
12. "Regulation" means the Virginia Pollution Abatement Permit Regulation, 9 VAC 25-32-10, *et seq.*
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.
16. "VPA" means Virginia Pollution Abatement.

17. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
18. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Agri-Sludge, Inc. (Agri-Sludge) is subject to the Permit which allows Agri-Sludge to perform contract application of biosolids, in compliance with the terms and conditions of the Permit.
2. On July 14, 2015, DEQ Valley Regional Office conducted a site inspection of a biosolids application at the L. Wayne Phillips Farm in Broadway, Virginia and observed the following:

- a. The Nutrient Management Plan (NMP) had expired prior to biosolids application.

The Permit Part I.D.3 required that "[A] NMP shall be developed for each land application site prior to biosolids/residuals application. A copy of the NMP shall be present at the land application site during land application operations and available for review by DEQ staff."

- b. Field setbacks were not properly flagged as described in the Facility's O&M Manual.

The Permit Part I.D.6 required that "[T]he permittee shall conduct all biosolids/residuals use or disposal activities in accordance with the O&M Manual..."

- c. Biosolids were applied to slopes exceeding 15% without approval by DEQ.

The Permit Part I.D.13 stated that "[B]iosolids/industrial sludges/WTP residuals shall not be applied to site slopes that exceed 15%."

- d. The Nutrient Management Plan did not contain the following information:
  - i. Maps that include farm locations and boundaries; field boundaries with IDs and acreage; structures and environmentally sensitive areas, streams, etc.;
  - ii. Balance sheets that include the farmer's name and commercial fertilizer rates and timing; and
  - iii. Nutrient Management Plan special conditions for VPA permits that include a spreading schedule chart.

The Permit Part I.D.3 requires that "[A] Nutrient Management Plan shall be

developed for each land application site prior to biosolids/residuals application...”

3. VRO issued a Warning Letter and a Notice of Violation for the violations noted in paragraph 2 above as follows: WL No. W2015-07-V-1007, issued July 10, 2015; and NOV No. W2015-08-V-0003, issued September 1, 2015.
4. The Department has issued coverage under no permits or certificates to Agri-Sludge other than under VPA Permit No. VPA01584.
5. Based on the results of the July 14, 2015 inspection, the Board concludes that Agri-Sludge has violated the Permit Part I.D.3, Part I.D.6 and Part I.D.13 as noted above.
6. On August 20, 2015 Agri-Sludge submitted an updated NMP for the L. Wayne Phillips farm and on August 28, 2015, Agri-Sludge submitted an updated O & M Manual. These submittals resolve the violations cited in paragraphs C(2a) and C(2d) above.
7. On January 27, 2016, Agri-Sludge operators completed biosolids application training conducted by DEQ. This training included observing field setbacks and not applying biosolids on slopes that exceed 15%. This training resolved the violations cited in C(2b) and C(2c) above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Agri-Sludge, and Agri-Sludge agrees to:

Pay a civil charge of \$3,375 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Agri-Sludge shall include its Federal Employer Identification Number with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Agri-Sludge shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Agri-Sludge for good cause shown by Agri-Sludge, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2015-08-V-0003 dated September 1, 2015 and Warning Letter No. W2015-07-V-1007, dated July 10, 2015. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Agri-Sludge admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Agri-Sludge consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Agri-Sludge declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Agri-Sludge to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Agri-Sludge shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Agri-Sludge shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Agri-Sludge shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;  
and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Agri-Sludge. Nevertheless, Agri-Sludge agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Agri-Sludge has completed all of the requirements of the Order;
  - b. Agri-Sludge petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Agri-Sludge.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Agri-Sludge from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.\_

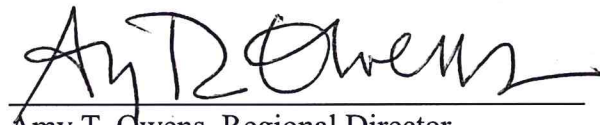
12. Any plans, reports, schedules or specifications attached hereto or submitted by Agri-Sludge and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Agri-Sludge certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and

legally bind Agri-Sludge to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Agri-Sludge.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Agri-Sludge voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 21<sup>st</sup> day of April, 2016.



Amy T. Owens, Regional Director  
Department of Environmental Quality

Agri-Sludge, Inc. voluntarily agrees to the issuance of this Order.

Date: 03-02-2016 By: Thomas W. Abraham, President  
Tom W. Abraham (Title)  
Agri-Sludge, Inc.

STATE OF OHIO  
~~Commonwealth of Virginia~~  
City/County of HOLMES

The foregoing document was signed and acknowledged before me this 2ND day of MARCH, 2016, by THOMAS W. ABRAHAM who is PRESIDENT of Agri-Sludge, Inc. on behalf of the corporation.

  
Notary Public

N/A  
Registration No.

My commission expires: 6/25/21



SHERRY L. MULLET  
NOTARY PUBLIC, STATE OF OHIO  
My Commission Expires June 25, 2021

Notary seal: